

1
2
3 *E-FILED 12/19/06*
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

GE SONG,

Plaintiff,

v.

MICHAEL CHERTOFF, et al.,

Defendants.

Case Number C 06-07726 RS

ORDER TO SHOW CAUSE

On December 18, 2006, plaintiff Ge Song, appearing through counsel, filed a "Complaint For Writ in the Nature of Mandamus & Declaratory Judgment" against defendants Michael Chertoff, Secretary of the Department of Homeland Security; Emilio T. Gonzalez, Director of the United States Citizenship and Immigration Services ("CIS"); Christina Poulos, Acting Director of the California Service Center of the CIS; and Robert S. Mueller, III, Director of the Federal Bureau of Investigation.

Plaintiff alleges defendants have failed to process his I-485 application in a timely manner, apparently as a result of delays in obtaining a completed background check clearance

1 from the Federal Bureau of Investigation. Plaintiff alleges that, as a result, defendants have
2 violated the Administrative Procedures Act, 5 U.S.C § 701 et. seq. Plaintiff requests that this
3 Court enter an order directing defendants to adjudicate his application and provide him with a
4 notice of decision. Good cause appearing, IT IS HEREBY ORDERED as follows:

5 (1) The Clerk of the Court shall serve a copy of the complaint and a copy of this
6 Order upon counsel for Defendants, the Office of the United States Attorney. The Clerk of the
7 Court also shall serve a copy of this Order upon Plaintiff's counsel.

8 (2) Defendants shall, within sixty (60) days after receiving service of the complaint,
9 file and serve upon Plaintiff an answer, showing cause why the relief prayed for should not be
10 granted. At the time the answer is filed, Defendants shall lodge with the Court all records
11 relevant to a determination of the issues presented by the complaint. If Defendants contend that
12 Plaintiff has failed to exhaust administrative remedies as to any ground for relief asserted in the
13 complaint, Defendants shall specify what administrative remedy remains available to Plaintiff.
14 If Defendants waive or concede the issue of exhaustion, Defendants shall so state in their
15 answer.

16 (3) Plaintiff may file a response to the matters raised in the answer within twenty (20)
17 days after receiving the answer.

18 (4) Unless otherwise ordered by the Court, the matter will be deemed submitted upon
19 the filing of the response or upon the expiration of time to file a response.

20 (5) No later than the time their respective responses hereunder are due, the parties
21 shall make their determination regarding the issue of consent to the jurisdiction of the Magistrate
22 Judge and file the appropriate form. In the event any party declines to consent to the jurisdiction
23 of the Magistrate Judge, this action will be reassigned to a District Judge for further proceedings.

1 (6) The Order Setting Initial Case Management Conference and ADR deadlines dated
2 December 17, 2006 (but actually entered after the complaint was filed, on December 18, 2006)
3 in this action is hereby VACATED.

4 IT IS SO ORDERED.

5
6 Dated: December 19, 2006
7


RICHARD SEEBORG
United States Magistrate Judge

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **THIS IS TO CERTIFY THAT NOTICE OF THIS ORDER WAS ELECTRONICALLY
2 PROVIDED TO:**

3 **Counsel for Plaintiff(s)**

4 Stanley Chao, Esq.
5 28 North First Street, Suite 400
6 San Jose, CA 95113

7 Dated: December 19, 2006

8
9 /s/ BAK
10 Chambers of Magistrate Judge Richard Seeborg

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28